S. Dwr. 4/43

1943

File No.

Examined
[illegible]

Legal DEPARTMENT

A BRANCH

Subject:— Suits - Dharwar

L. Civil Suit No 411 of 1942.

Honappa Virappa Gadad .. Plff

1) The Government of Bombay
2) Nagappa Basappa Gudagar. } — Defts

Claim — Rs

P. 21=E

File No. S. Dwr. 4/43

Std. Book Slip 24-2

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Letter.

Subject :- Dharwar L.C. Suit. No. 411 of 1942

No.L.A. . 413. Dharwar, 19th March 1943.

To

The Commissioner, S.D.,
Belgaum.

In submitting herewith a copy of the L. A's letter No. 130 of 10-3-1943 along with its accompaniments, I have the honour to request that sanction may be accorded to the defence of the suit generally on the lines indicated in the Deputy Remembrancer's Pleader, Dharwar.

Collector of Dharwar.

No.L.S.T.-280.
Camp Dharwar, 19th March 1943.
Submitted with concurrence.

Commissioner S.D.

5.--- 1943 Accept:

Remembrancer of Legal Affairs.

4294
A25-3-43

Copy of the letter No. 150 of 10-3-1943 from the D.J... Dharwar.

In accordance with Rule 118 of the Law Officers Rules, I have the honour to submit herewith chronological statement of facts, grounds of defence and draft written statement in triplicate, together with all the papers in one file in connection with the suit, for favour of according sanction to the defence of the suit.

1. The suit is numbered as L.C. Suit No. 452 of 1942 of L.C.Court Dharwar.
2. The suit has been filed in the Court of the L.C. Sub-Judge, Dharwar.
3. Plff. Honnamma Virappa Garad of Navri.
4. Vs.
   Deft:- The Province of Bombay.
5. The suit was filed on 26-9-1942 in the court of the First Class S.J.Dharwar.
6. Notice of suit under sec. 80 of the C.P.C. has been given to the Collector by the Plff.
7. The suit has been fixed on 20-3-43 for written statement on behalf of deft (Gov)

It is submitted, therefore, that the defence of the suit may kindly be sanctioned with such additions or amendments as may be deemed fit and proper.

L.C.Suit No.411 of 1942.

In the Court of the First Class Sub-Judge,

at Dharwar.

Plff:-Honnappa Virappa Gadad of Haveri.

Vs.

Deft:-The Government of Bombay.

[redacted].

Chronological statement of facts.

1. The suit is for a declaration that the open site situated in the goanthana of Nilogal village, Taluka Haveri, District Dharwar, and lying between the house of the plff on the south and the open site of plff on the north is of plff's ownership and is in his possession and Mahiwat (2) an injunction restraining defts from obstruct ing plff in his (Govt) from levying fine of Rs.5/- impose -ed upon him (plff) & (4) costs and equitable relief.

Sketch at P.5 file

2. On 31-3-1939 one Nagappa Basappa Gudgur, an owner of the house adjoining that of plff to the east applied to the Mamlatdar, Karajgi, complaining that one Hemappa a tenant in plff's house had blocked the road (represent- ed by the red dotted line A.B. in the sketch which gave access to his house) by errecting a hedge and dung- hill and praying that the obstruction may be removed.

P.1 file

3. On 31-3-1939, the Mamlatdar forwarded the above application to the Circle Inspector Haveri for inquiry and removal of the encroachment. On 30-4-1939, the C.I. submitted a report to the Mamlatdar to the effect that the plff whose statement was recorded before him relied upon two sale deeds, first dated 21st April 1868 and the second dated 3-10-1894 and several rent notes from 1890 to 1939 in respect of plff's house and stated that the open site was of his private ownership and that there was no road leading to the house of the applicant Nagappa as contended by him, and further reported that the - applicant Nagappa ho relied upon the two sale deeds in respect of his house dated 8-2-1911 and 17-3-1933, - contended that the open site claimed by plff formed part of a road leading to his house.

Statement of plff before the C.I. dated 30-4-39 P.7 file.

Report of C.I.P.37 file

I sale-deed dated 2-4-1868 P.81 file

II sale-deed of 3-10-1894 & P.85 file

III Rent notes P.87 to 117

IV Sale-deed dated 8-2-1911 P.57 file

V. Sale-deed of 17-3-33 P.59-61.

4. On 29-12-1939 the Revenue Head Karkun, Haveri Taluka who inspected the village Nilogal, submitted a report to the Mamlatdar, Haveri, that the road had been blocked by plff and inquiry be held under sec.37 of the L.R.C. P.47-49 file

5. On the same day the Mamlatdar, Haveri, submitted the papers to the Assistant Collector, II Division, Dharwar recommending that an inquiry under section 37 Bombay L.R.C. may be held.

6. On 5-8-1940, the Assistant Collector held a formal inquiry under section 37 Bom. L.R.C. and on 21st October 1940 he found that the road past Honnappa's (plff's) house to be a public way and ordered plff to remove without delay the hedge blocking it. The Assistant Collector further ordered recovery of fine of Rs.20/- from plff for his malacious and malevolent use of the way causing incovenience to his neighbours. On 21-10-1940, notices of order in form C ~~as~~ ordered to be issued by the Asst. Collector to be served on the plff; and the notices was accordingly served on him on 23-11-1940. P.155-160 file P.161-163 P.163.

7. On 5-12-1940 plff filed an appeal to the Collector of Dharwar from the above mentioned order of the Assistant Collector on 21-10-1940. P.177-181 file.

8. On 15th May 1941 the Collector confirmed the order of the Assistant Collector except the order of fine which was reduced to Rs.5/-. The Collector also found that there was a regular road infront of plff's house and the existence of it was mentioned in the documents produced which were ~~exempted~~ executed prior to the ~~assigning~~ arising of the dispute that the open site in dispute was was a public road vesting in Government and that there was no adverse possession of it as claimed by plff. The Collector thereupon ordered the removal of the obstruction made by plff. P.193 file

8-A. On 26-5-1941, the Assistant Collector ordered that the obstruction caused by the appellant should be removed and the fine of Rs.5/- should be recovered.

9. On 9th June 1941, plff preferred a further appeal to the Bombay Revenue Tribunal. On 8th March 1942, the B.R.T. in its No. 0-76 of 1942 dismissed plff's petition confirming the Prant's order of 21st October 1940 upheld by the Collector on 15th May 1941. The B.R.T. observed as follows in para 6 of their order. "In the first place, the documents being private cannot be binding on P.loose paper

Government. Moreover, they are adverse to the applica
own interest. In all these documents the open space in
dispute has been shown as southern boundary of the -
applicant's open site and northern boundary of his house
site (house including the katta). Had the open site in
dispute formed part of the house site itself, it could
not have been shown as the northern boundary of the house
site. In that case the applicant's own site on the north
of the open space in dispute would have been the
boundary of the house site. Besides the word "Road" is
mentioned in all these documents, the applicant has not
shown that the road absolutely vests in himself. The
road is admittedly common to all the neighbouring houses.
It is thus a public road vesting in Government under sec.
37(1) of the Land Revenue Code. The open space(of which
the site in dispute forms part) infront of all these
houses also vests in Government as part of the village
site. The fact that the applicant uses a part of the open
space for tethering cattle or storing manure does not
and cannot be considered as possession adverse to Govt."

10. On 3rd July 1942, plff gave the Collector of
Loose papers file. Dharwar notice of suit under section 80 C.P.C. The
Collector acknowledged receipt of the same in 9th July
1942.

11. On 6th July 1942, the Mamlatdar reported to the
Assistant Collector that the encroacher (plff)
was not willing to remove the encroachment voluntarily
and requested for necessary orders of removal of the same
through Government agency after issue of notice of -
eviction under section 202 L.R.C.

12. On 25-9-1942, the Prant filed the present suit
in the court of the First Class Sub-Judge, Dharwar, for
reliefs mentioned in para 1 of C.S.F. above.

Grounds of defence.

The suit has to be defended on merits.

1. Plff relies upon two sale-deeds dated 2-4-1868
(P.81 file) and dated 3-10-1894 (P.85 file). The

former is passed on by Doddaningangouda bin Ujjangouda in favour of Basappa Neelogi of Katenhalli in respect of (a) a house with mud roof and back-yard & (c) a vacant land at Nilogal village. This is the house now owned and occupied by plff. The boundaries of the house are as follows:- "To the north east the house of Anewari Nagappa and his backyard, to the West the site of Talwar Honnetteppa; to the north the back-yard of Nagappa Anewari and my back-yard. To the south the house of Anweri Irappa and the back-yard of Balammanavar". At the end of the description of the boundaries, the house and open site are mentioned.

(B). The back-yard containing 4 tarmarind trees with walls is described to be bounded as follows:-

To the east the back-yard of Nagappa Anewari, to the west road, to the south road to the house (mentioned at 'A' above) to the north the back-yard of Banakar.

II. The next sale-deed of 1894 (P.85 file). This is with respect to the same property as mentioned in the sale-deed of 1868 and passed by Gurushantappa son of Basappa Katenhalli of Nilogi, in favour of Parappa Honnappa Gadag (ftaher of plff). The boundaries given are the same as those given in the sale-deed of 1868. The house is described at the end of the description of its boundaries as the house with boundaries as shown above, with roof, front door, site for building front portions including front-yard".

It may be contended that the recitals in these deeds are not binding against Government which was not a party to them. Moreover, they are adverse to plff's own interest. In these documents i.e. the sale-deeds, the open site in dispute is shown to be (a) the southern boundary of plff's open site purchased by his father in 1894 from Gurushantappa Katenhalli whose father Basappa purchased it in 1868 from Doddaningangouda and the - northern boundary of plff's house. In some of the rent-notes (P.99-117) relied upon by plff, the western and northern boundary is shown to be the road to plff's house and Government road. As observed by the B.K.P., had the open site in dispute formed part of the house site itself, it could not have been shown as the northern boundary of the house site. In that case the open site on the north of the open space in dispute would have been the

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the northern boundary of the house site. Besides, the word 'Road' is mentioned as the southern boundary of the"back-yard" sold. Presumably this road which forms part of the road mentioned as A.B. in the sketch at P.5 of the file and which is common to all the neighbouring houses, vests in Government under sec.37(1) L.R.C.The road is thus a public road. The open space ifront of all these houses also vest in Government as part of the village site.

III. The fact that the plff has been using a part of the open space for tethering cattle and storing manure does not and cannot be considered as possession adverse to - Government (16 Bom.I.L.R.P.)Against Government plff cannot prove that he and his predecessors-in-title were in possession to the knowledge of Government.

IV. On the other hand in the sale-deeds dated 8-2-1911 (P.57) and 17-3-1933 (P.59) in respect of house to the east of plff's house and now occupied by Nagappa Basappa Gudgur (ho complained of plff's encroachment, see C.S.F. para 2 above), the western boundary of the house of Nagappa is stated to be "the house of Nagappa Gadad and his back-yard including road.".

V. It would be clear from all the above documents that plff's title to the site in dispute cannot be proved either by virtue of purchase or by virtue of adverse - possession.

For all these reasons, it should be contended tha plff's suit should be dismissed with costs.

Draft written statement.

1. The plff's claim to the property in suit is denied in toto.

2. The allegations in para 2 of plaint are denied. The plff's title to and enjoyment of the open site in dispute as owners either by virtue of purchase or by adverse possession is denied.

3. The sale-deeds relied upon by plff are not admitted and the recitals therein are not binding upon Government which was not a party to them.

4. Neither the plff nor his predecessors-in-title - have been in enjoyment and possession of the site in dispute and the plff has not acquired any title to it by adverse possession. The alleged possession of plff is furtive and cannot vest any title in the plff to the said site.

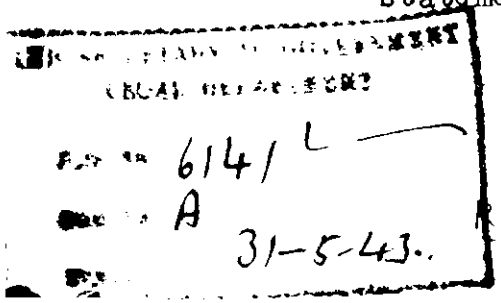
5. The allegations in para 3 of plaint are denied. The site in dispute which is an open site situated in goanthana of Nelogi village vests in Government under section 37(1) of the Bombay Land Revenue Code.

6. The orders of the revenue authorities upheld on - 8-3-1942 by the Bombay Revenue Tribunal are intra vires, legal and justified. Allegations to the contrary in para 5 of plaint are denied.

7. The plff's suit should be dismissed with costs.

This is an encroachment suit from Dharwar. The Asstt. Collector's order was confirmed by the Collector and the B.R.T. The plaintiff was able to produce some documentary evidence but it negatives rather than supports his claim.

2. Sanction may be accorded to the defence of the suit on the lines of the appended brief. A revised draft written statement is put up.



RLA

Sec'y R.D. issued under no. 3864 of 28-5-43.

~~22~~ 13

DHARWAR L. CIVIL SUIT No. 411 OF 1942.

Chronological Statement of Facts.

This is a suit filed by the plaintiff Honappa Virappa Gadad claiming title to an open site situated in the village of Nilogal, taluka Haveri, district Dharwar.

p. 1 of the file. 2. On 31st March 1939, one Nagappa Basappa Gudgar, a neighbour of the plaintiff, reported to the Mamlatdar, Karajgi, that one Hemappa, a tenant in plaintiff's house, had blocked the road (portion marked in red dotted line A B in the sketch) by erecting a hedge and dunghill. The Mamlatdar, after enquiry, forwarded the papers to the Assistant Collector, II Division, for necessary action.

p. 5 do.

pp. 155-160 do. 3. On 5th August 1940, the Assistant Collector held a formal inquiry under section 37, Bombay Land Revenue Code, and on 21st October 1940, he declared that the road past Honappa's (plaintiff's) house was a public way; and ordered plaintiff to remove the hedge, and fined him Rs. 20. A notice in Form "C" was served upon plaintiff on 23rd November 1940.

pp. 161-162 do.

p. 163 do.

pp. 177-181 do. 4. On 5th December 1940, plaintiff preferred an appeal against the abovesaid order to the Collector of Dharwar, who, on 15th May 1941, confirmed that Order but reduced the fine to Rs. 5.

p. 193 do.

5. On 9th June 1941, plaintiff being aggrieved by the Order of the Collector preferred an appeal to the Bombay Revenue Tribunal but the Tribunal dismissed it by its Order No. 0-76, dated 8th March 1942.

loose pp.

6. On 2nd July 1942, plaintiff gave a notice under section 80 of the Civil Procedure Code to the Collector of Dharwar.

7. On 25th September 1942, the plaintiff filed the present suit in the Court of the First Class Sub-Judge, Dharwar, praying for—

(*a*) a declaration that the suit site belongs to plaintiff and that it is in his possession and wahiwat;

(*b*) an injunction restraining defendants from obstructing him in the enjoyment thereof and levying fine of Rs. 5 imposed upon him;

(*c*) costs and such other reliefs.

Grounds of defence.

The suit should be defended on merits.

2. The suit site is open and unoccupied. The plaintiff had erected, it seems, a temporary hedge, which gave rise to the encroachment proceedings. He also seems to have tethered his cattle on part

of the land. But this does not constitute juridical possession of the land on his part, and no presumption in his favour can arise under section 110 of the Evidence Act. On the other hand, an order has been made under section 37 (*2*) of the Bombay Land Revenue Code, 1879, declaring the land to vest in Government. The order is *intra vires* and has been confirmed by the Bombay Revenue Tribunal; and it would be final and conclusive unless set aside in a suit filed within the limitation period specified in section 37 (*3*) of the Bombay Land Revenue Code, 1879. The burden of proof of his title rests heavily on the plaintiff.

3. The plaintiff relies on two sale deeds of 1868 and 1894, respectively, and certain rent notes passed in favour of his predecessor in title. But in the first place, Government was not a party to those documents, and recitals therein are therefore not binding on it (*see* 58 Cal. 858 P.C. at page 866). Those recitals are however binding on the plaintiff who claims through persons who were parties to the documents And in fact the documents do not lend support to the plaintiff's case. The suit site is in these documents shown as the southern boundary of the plaintiff's open site and northern boundary of his house site; if the disputed land formed part of his holding, it would have been shown accordingly, and not as indicating the boundary of his holding.

4. Moreover, two sale deeds produced during the enquiry, namely, those dated 8th February 1911, and 17th March 1933, which relate to the house to the east of the plaintiff's house also negative the plaintiff's contention.

5. The District Government Pleader's attention is invited to the detailed discussion of this evidence in the orders of the Assistant Collector, Collector and the Bombay Revenue Tribunal.

6. As the plaintiff had unauthorisedly occupied the suit land the order levying fine is lawful under section 61 of the Bombay Land Revenue Code, 1879, and the unauthorised encroachment is liable to be removed under section 202 of the said Code.

7. For all these reasons it should be urged that the suit fails and should be dismissed with costs.

Suits :

Dharwar.

For a declaration that the open site situated in the village of Nilogal, taluka Haveri, district Dharwar, and lying between the house of the plaintiff on the south and open site of the plaintiff on the north is of plaintiff's ownership and an injuction against defendants.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 3986-A.

Bombay Castle, 3rd June 1943.

Letter from the Collector of Dharwar, No. L.A.W. 413, dated the 13th March 1943—Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

In the Court of the First Class Sub-Judge, Dharwar.

L. Civil Suit No. 411 of 1942.

Honappa Virappa Gadad ... ... Plaintiff ;

versus

(1) The Government of Bombay ... ...
(2) Nagappa Basappa Gudagar ... ... } Defendants.

Claim—Rs.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 280, dated the 19th March 1943—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Dharwar, No. 3986, dated the 3rd June 1943—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—The defence of the suit should be sanctioned on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. N. MOOS,
Secretary to Government.

G. R. No. 3986-A, L. D., dated the 3rd June 1943.

To

* The Revenue Department,
* The Commissioner, Southern Division,
* The Collector of Dharwar,
The Secretary, Bombay Revenue Tribunal,
The District Government Pleader, Dharwar (with two copies of the brief).

* With a copy of the brief.

No. of 1943.

Copy forwarded for information and guidance to

Submitted after issue
file
A.S.

~~25~~ 15

In the Court of the First Class Sub-Judge,
Dharwar.
L.Civil Suit No. 411 of 1942.

Honnappa Virappa Gadad of Hsveri ... Plaintiff;

versus

The Government of Bombay;
Nagappa Basappa Gudgur. ... ... Defendants.

The written statement of defendant No. 1 abovenamed is as follows:-

1. The plaintiff's claim in suit is denied.

2. It is denied that the plaintiff holds title to or possession of the suit land.

3. It is further denied that the plaintiff or any person through whom he claims ever held title to or possession of the said land. The allegations in paragraphs 2 and 3 of the plaint are denied.

4. The allegations to the effect that defendant 2 was actuated by malice towards the plaintiff are not admitted.

5. The suit land forms part of a public street and vests in this defendant under section 37(1) Bombay Land Revenue Code, 1879.

6. The order of the Prant Officer confirmed on appeal by the Collector and the Bombay Revenue Tribunal is lawful and correct.

7. The plaintiff is not entitled to any of the reliefs prayed for and it xi is submitted that the suit be dismissed with costs.

District Government Pleader, Dharwar.

I, District Government Pleader, Dharwar, do hereby solemnly declare that what is stated in paragraphs 1 to 7 above, is true according to the information received and believed to be true. This verification is made at Dharwar on the day of 1943.

District Government Pleader, Dharwar.

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L.C.Suit No.411 of 1942.

In the Court of the First Class Sub-Judge, at Dharwar.

Plff:-Hormappa Virappa Gadad, age 68, Lingayat, trade, agriculturist, of Haveri.

Vs.

Defts:- 1. The Province of Bombay.

2. Nagappa Basappa Gudagur, age 59, caste Lingayat, Occ.teacher of Nilogal Taluka Haveri.

Valuation:- For court fee: Rs.5-6-0

For jurisdiction: Rs.70/-

In this the plff begs to state as follows:-

1. Description of the property in dispute.

An open space in front of the plff's house situate at Nilogal in Talwar Galli Taluka Haveri, District Dharwar, with its boundaries as mentioned below:-

East:- Back-yard of deft No.2 Nagappa Basappa Gudagur.

West:- The house in which Allisab Md. Karimsab Pinjar resides; the ~~xxx~~veranda and the approach road to the suit ~~xx~~ site.

North:- The back-yard purchased by the plaintiff from Sangappa Ankewari.

South:- Plff's house, the Katta infront of it and the veranda.

The said open space in dispute belongs to the plff a is in his possession and Jahiwat as owner.

For a fuller understanding of the case, a hand-sketch of the map is drawn, and is appended hereto in schedule 'Q'. the same may be referred to, with advantage. The house marked 'H' belongs to the plff. The house 'N' together with the backyard shown by dotted lines belongs to deft 2; the open site X.Y.C.D. is the site under dispute, showing the suit open space and the neighbouring sites.

2. The suit open space belongs to the plff, as the same was purchased by the ancestors of the plff, from its previous owners, as long back as more than 66 years ago. Since the, that is, since more than 66 years ago, that is since before 1860 A.D. or so, the plff, his ancestors and their predecessors-in-title have been in ~~x~~ possession of the suit property as owners thereof.

3. The deft No.1 or deft No.2 has never owned the suit site during the said period, and has never been in possession of the

[illegible] the said period. [illegible] the

il property during that time in any capacity whatsoever. The defts have not come to have , both in fact and in law, in x interest in the suit property at any time during the said period, either by way of possession, ownership or right of easement of any kind or any other use or interest.

4. Things being so, the deft No.2 maliciously and to cause loss to the plff and to gain wrongfully to himself, moved the deft No.1 alleging among other things that the suit site is an open passage, belonging to the Government and that he has a right of passage over the same, as a member of the public.

5. Therefore, encroachment proceedings were started under the Land Revenue Code by the Prant Officer, who held against the plff that the suit-site belongs to Government and that it is a public passage. An appeal was preferred against the same to the superior officers, right up to the Revenue Tribunal by the plff, but to no effect. The Revenue Tribunal decided against the plff on 8-3-1942. The Revenue Officers took an erroneous view of the situation of the suit site, and also of the documentary and oral evidence in the case and came to a wrong conclusion. The plff asserts that upon the correct appreciation of the documentary and oral evidence in the case, and upon a proper understanding of the map, one should come to an irresistiable conclusion that there is no, could not and cannot be any public road on the open site in dispute and that the suit site belongs to the plff and his ancestors and is in possession of the plff. Hence, the plff is aggrieved by the adverse order of the deft No.1 passed on 8-3-1942 at the instance and to the advantage of deft No.2. A fine of Rs.5/- also was imposed against the plff by the said wrong order. Hence this suit by the plff, that as the said order of 8-3-1942 by the Revenue Tribunal is wrong in law and in fact, to get a declaration that the plff is the rightful owner and wahivatdar of the suit site and consequent upon that declaration for an injunction against the deft No.1 not to levy the fine of Rs.5/- imposed against the plff by the said order and agaisnt the defts, to restrain them from obstructing the plff in his use and enjoyment of the suit property which belongs to him.

6. Cause of action for the suit arose on 8-3-1942 wne deft No.1 passed the said adverse order against the plff in favour of deft No.2, and against defts when they obstructed the plff, on the strength of that

The su said cause of action for the suit is in time. 19

7. The suit is valued for court fee at Rs.5/- the minimum under Section 7(iv c) of the Court fees Act, for the purpose of declaration in para 9 A below and for an injunction in para 9 B below, and also 0-6-0 on the valuation of Rs.5/- for injunction prayed for in para 9C So the total court fee on the reliefs claimed is Rs.5-6-0, and the same is paid herewith. For the purpose of jurisdiction and pleader's fees, the suit site is valued at Rs.70/-

8. The deft No.1 being the Province of Bombay, the required notice under section 80 of the C.P.C. has been given more than two months ago, on 3-7-1942 and accepted by the Collector on 8-7-1942, and after the expiry of the said period, this suit is filed. A copy of the said notice and reply Ex.3 is produced herewith.

9. The plff prays that a decree granting the following reliefs be passed in his favour against the defts.

A. The court should declare that the suit site belongs to the plff and is in his possession and vahivat.

B. And an injunction against the defts not to cause obstruction to the plff, in his use and enjoyment of the suit property as the same belongs to him.

C. And also for an injunction to be issued against the deft No.1 not to levy the fine of Rs.5/- imposed against the plff against the said illegal order.

D. The plff further prays that a decree for costs of the suit be also passed in his favour against the defts.

E. The plff prays for such further relief as is deemed fit and proper by the court.

Dated 22-9-1942.

Translation of the certified copy of a Kannada sale deed executed by Dodda Ningangowda Bin Ujangowda Neelavvanavar of Nelogal, taluka Karajgi, district Dharwar, in favour of Basappa Nelavigi of Katenhalli, taluka Karajgi, district Dharwar for value Rs. 720.

This indenture of sale executed this Chaitra Bahula 14 of Vikhava Samvatsara (corresponding to -- 21-4-1868) by me i.e. Dodda Ningangowda Bin Sidan Ujangowda Neelavvanavar (vendor), residing *_____* at Nelogal, taluka Karajgi, in favour of Basappa Nelavigi (vendee), residing at Katenhalli, witnesseth:-

_____ This is scored out in the original.

For the amount of Rs. 720, in words rupees seven hundred and twenty taken from you in cash by me, I have given to you the following property for sale. Its details are:-

For Rs. 200/-, in words rupees two hundred my own house with a flat roof together with the open space, situated in the village of Nelogal, taluka Karajgi, and bounded by the house and back-yard of Nagappa Anevari on the east, by the open plot of Talawar Honanti on the West, by the back-yard of Nagappa Anevari and my back-yard on the north and by the house of Irapa Anevari and the back-yard of Balammanavar on the south.

For Rs. 40/-, in words rupees forty, my own back-yard, together with the open space, wall and four tamarind trees, situated in the said village and bounded by the back-yard of Nagappa Anevari on the east, by the road on the west, by the way leading to the said house on the south and by the back-yard of Banakar on the north.

For---

For Rs. 480/-, in words rupees four hundred and eighty, the field situated in the said village and bearing survey No. 5, measuring 19 acres and 23 gunthas, and assessed at 22 rupees, together with 12 thorny babool trees.

Thus for the amount of rupees seven hundred and twenty I have given to you for sale the said field, house, back-yard and trees and have given the said property in your possession. Neither my heirs nor the executors of my will have any claim over the said property. Written with my acquiescence and signed on the above mentioned day. Dastur Irabasappa Shirur of Katenhalli (Signed in Kannada)- Dodda Ningappana Nelogal Gowdar.

Witnesses

1. Ganesh Kirti Kulkarni of Kaledevar, dastur Khud. ——→ (signed in modi)

2. Lingo Mahadev Kulkarni Kanavalli, dastur Khud: ——→ (signed in Kannada)

(Endorsement by the Sub-Registrar)

Day Number - 2.

Presented in the office of the Sub-Registrar of Karajgi taluka at 2 P.M. on the 21st April 1868.

(Signed in Kannada) - Doda Ningangowda,

Dastur Khud:

Doda Ningandowda Bin Ujangowda Neelavvanavar, the executor of the deed, cultivates the field. He resides at Nelogal, taluka Karajgi and admits the execution of the deed and acknowledges the receipt of the amount.

(Singed in Kannada)-Dhoda Ningangowda,

Dastur Khud.

As regards the identification of the said person, the attestations of Ganesh Kirti Kulkarni of Kaledevar and Lingo Mahadev Kulkarni of ~~Kanval~~ Kanavalli, taluka Karajgi, were taken for identifying the above-mentioned Doda Ningangowda.

(Signed in modi)- Ganesh Kirti Kulkarni,
Kaledevar.

~~27~~ 23

(Signed in Kannada) - Lingo Mahadev Kulkarni,
Kanavalli.

As regards fees for three folios, rupees two and annas eight for registration were taken.

This is entered at journal No. 160 on page 246 of volume No. 1 at register No. 1

(Signed in modi) - Sitaram Narayan, Sub-Registrar.

Seal

21-4-43

ASP

Letter.

Subject:-Sanction for the defence in Civil Appeal No.74/44 from L.C.Suit No.411/42 of F.C.Court Dharwar.

No.L.A.W
Dharwar 30th March 1944.

To

The Commissioner, Southern Division,
Belgaum.

I have the honour to enclose herewith the papers received with letter No.86 dated 27-3-44 from the District Government Pleader, Dharwar addressed to the Rememberancer of Legal Affairs, Bombay and to request you kindly to move Government to accord sanction to the defence of the appeal mentioned above.

jh

Collector of Dharwar.

P.T.O

No. L.S.T.-280.
Office of the Commissioner S.D.
Belgaum, 18th April 1944.

Submitted with concurrence.

Remembrancer of Legal Affairs.

Commissioner S.D.

H

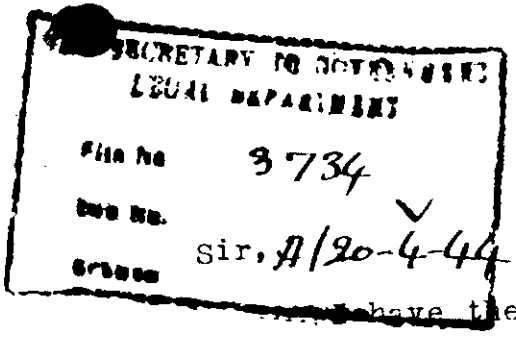
No. 86 TC

Dharwar 27 March 1944.

To

The Remembrancer of Legal Affairs,

Bombay.



Subject:-Sanction of defence in Civil Appeal No.74 of 1944, from L.C.Suit No.411/1942.
Appellant:-Honnappa Virappa Gadad of Haveri.
Vs.
Respondent:-The Province of Bombay.

I have the honour to state that the plaintiff Honnappa Virappa Gadad has filed an appeal in the District Court (Civil Appeal No.74 of 1944) against the judgment and decree passed by the learned Joint First Class Sub-Judge, Dharwar, on 31st January 1944. The defence of the said suit was sanctioned as per G.R.L.D.No.3986-A dated 3rd June 1943. I ~~27~~ ~~h~~d, therefore, request you to kindly ~~xxx~~ accord sanction to the defenc of the appeal on the lines mentioned in the above G.R. and as also on the favourable grounds contained in the judgment of the lower court.

The necessary papers viz.copies of appeal memo, appeal notice and the certified copies of judgment and decree in respect of L.C.Suit

No.411 of 1942 have been enclosed herewith for favour of perusal.

Your obedient servant,

S. R. Mandlekar

for District Government Pleader.

Respectfully submitted ~~to the~~ through the Collector of Dharwar, as per rule 82(2) of the Law Officers Rules, for favour of being submitted to the Legal Remembrancer, Government of Bombay.

S. R. Mandlekar

for District Government Pleader.

Submitted with ffs. S. Dwr. 4/43.

20/4. A.P.A. appeal no 74 of 1944 is an encroachment suit. Sanction may be accorded to the defence of the appeal on the lines of the printed brief and the favourable grounds in the judgment of the trial Judge. 20/4 RLA Asst 20/4/44

Suits:
Dharwar.
For a declaration that the open site situated in the village of Nilogal, Taluka Haveri, District Dharwar, and lying between the houses of the plaintiff on the south and open site of the plaintiff on the north is of plaintiff's ownership and an injunction against defendants.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 3044

Bombay Castle, 2nd April 1944.

Read Government Resolution, Legal Department No.3986-A, dated the 3rd June 1943.

Letter from the District Government Pleader, Dharwar, No.86, dated 27th March 1944 - Stating that a Civil Appeal No.74/44 has been filed by the plaintiff in the suit noted in the margin against the decision of the Joint First Class Sub-Judge, Dharwar, on 31-1-1944 and requesting sanction to the defence of the Appeal.

In the Court of the First Class Sub-Judge, Dharwar.	margin against
4 Civil Suit No 411/42.	the decision
Honnappa Virappa Gadad.....Plaintiff;	of the Joint
vs.	First Class
1. The Government of Bombay) 2. Nagappa Basappa Gudagar).....Defendants.	Sub-Judge, Dharwar, on

Endorsement by the Commissioner, Southern Division, No.L.S.T.-280, dated 18th April 1944 forwarding an endorsement by the Collector, Dharwar, No.L.A.W. dated 30-3-1944 of the District Government Pleader's letter No.86 dated 27-3-1944 and requesting sanction to the defence of the Appeal.

RESOLUTION.- Sanction is accorded to the defence of the appeal No.74/44 in the District Court, Dharwar, on the lines of the brief accompanying Government Resolution, Legal Department, No.3986-A, dated 3rd June 1943 and the favourable grounds contained in the judgment of the Joint First Class Sub-Judge, Dharwar, dated 31-1-1944.

By order of the Governor of Bombay,

K G Hudeshwar

(P.N.MOOS,
For (Secretary to Government.

Submitted for Signature.
S.P. 21-4.
Asst. P.A.
Asst P.A. 21/4

To
The Revenue Department,
The Commissioner, S.D.,
A.S.

The Collector of Dharwar,
The District Government Pleader, Dharwar (with papers).

Submitted after issue.
File No. S. Dvr. 4/43.
CRP.
24/4.
Adl. A.
on
24/4

31

Received on:- 13-3-44

Registered on:- 16-3-44

Decided on:- 15-10-1945

Duration - 1 year, 7 months and 3 days.

IN THE DISTRICT COURT OF DHARWAR.

AT DHARWAR. Appeal No. 74 of 1944 from Decree in Exhibit No. 12.

Civil Suit No. 411 of 1942 of the Court of the Sub-Judge, F.C. of Dharwar (Mr.A.C.Sequeire).

Pleaders.

Mr. S.C.Javali. — Honnappa Virappa Gadag of Haveri. — Plaintiff.

against.

Govt. Pleader Mr..G.G.Guttal. — 1. The Provincial Government of Bombay
2. Nagappa Basappa Gudgur of Nelogal, Taluka Haveri. ... .. — ~~Respondents.~~ Defendants.

Claim Rs- 5-6-0. Rs. 70/- for jurisdiction.

J U D G M E N T.

This is a suit by the plaintiff against the Government of Bombay and another for a declaration that the site C D marked in the sketch (Ex. 6A) in front of his house is of his ownership and that he has been in possession thereof for many years and for an injunction to restrain the defendants from interfering with his possession of that site and for a further declaration that the order of the Government of Bombay imposing a fine on him is ~~illegs~~ illegal . The site is a small strip of land in front of the plaintiff's house. He alleges that this strip was purchased by his predecessors along with the house and other property in the year 1868 and since then it has been in the possession of his predecessors and of himself. Recently the Revenue authorities, at the instance of defendant.No. 2,

held that the suit belonged to Government and was used as public high way for the villagers. Aggrieved by this decision of the Revenue authorities the plaintiff filed appeals and eventually his last appeal was dismissed by the Revenue Tribunal. He has therefore filed the present suit for establishing his ownership of the strip in question.

2. Defendant No.1, the Government of Bombay, contend by their written statement that the site in question forms part of a public street and vests in them under section 37 of the Bombay Land Revenue Code. Defendant No. 2 also puts forward the same contention and denies plaintiff's ownership of the site.

3. The lower Court held that the site did not belong to the plaintiff, that it formed part of a public road and therefore dismissed the suit. Against that decision the plaintiff has come in appeal.

4. The questions for decision are:-

i. Whether the plaintiff proves his title to the suit plot and his possession thereof within 12 years next before suit ?

ii. Whether he further proves that he has perfected his title by adverse possession ?

iii. Whether the defendants prove that the site in question forms part of a public high way ?

5. There is not much of oral evidence in the case. The plaintiff mainly relies on certain documents from which it is suggested that the plot belongs to the plaintiff and his predecessors-in-title. The first document (Ex. 39) is of the year 1868 where in certain property in two parts was conveyed to the plaintiff's predecessor-in-title. The property consisted of a house and a back yard; and from the description of the boundaries given therein of these

two items the plaintiff has to suggest that the plot in question formed part of the property conveyed to his predecessor-in-title. The plot in question is to the north of the house and to the south of large back yard conveyed by the sale-deed. The plaintiff relies on the description of the northern boundary of the house, ~~whether~~ where in no public road is mentioned as forming the northern boundary of the house. From the boundaries of the back-yard it is found that the existence of a road is mentioned as forming the southern boundary of the back yard. Now the plaintiff's contention is that that road is a public road up to a certain point and thereafter it is a private road leading to his own house. If we look to the sketch (Ex. 6A) the plaintiff's contention seems to be that the road given as the soughern boundary of the back yard is the road which leads from the regular public road A B and it is used as a branch of that road up to the point K only. And his further contention is that from K onwards the way leads up to his house only and it is a private way to pass over which he has obtained a prescriptive right. This is the main document and the other documents on which he relies are rent-notes (Exs. 52 and 53) of the year 1891, the sale-deed (Ex.40) of the year 1894 and some more rent-notes (Exs.54 to 67) between 1914 and 1939. All these documents relate to the plaintiff's property and they practically copy the boundaries from the original sale-deed (Ex. 39). So these documents do not advance the plaintiff's case further. He also relies on some documents relating to the property of defendant No. 2. Ex. 41 is the sale-certificate of the year 1976 and Ex. 42 is a mortgage deed of the year 1891 in which the existence of the road in question is not to be found as forming the western boundary of the defendant's prpperty. The plaintiff

has, therefore, to contend that the way leads only up to his house part of which is public and part is private.

6. On the other hand there are also other documents relating to the defendant's property which mention the existence of this road, and they are Exs. 48 and 49, the sale-deeds of 1911 and 1913 respectively. Therein the existence of the road to the west of the property is mentioned. It may be that the earlier documents relating to the defendant's property have omitted to mention the existence of this road. Ex. 41 was only a sale-certificate and very probably the existence of a road was not noticed or rather was thought not necessary to be mentioned. The mortgage deed (Ex. 42) practically copies the boundaries given in Ex. 41. But what is significant to note is that the plaintiff's documents as also the later documents relating to the defendant's property do mention the existence of this road, and it is, further significant to note that ~~now here~~ nowhere in these documents is the way described to be a private one. If it was a private road, there was nothing to prevent the parties from saying so. Moreover if we see the sketch it looks rather improbable and highly unnatural that the road branching off from the larger road A B should lead only up to the point K and thereafter it should cease to be a public road and become a private one. A look at the sketch will show that the strip of land CD claimed as the property of the plaintiff is a part of high way which leads directly from the main public road AB to the collection of houses situate to the west of the plaintiff's house and to the house of defendant No. 2 to the east.

7. The oral evidence show that this road has all along been used by the villagers as a public road

and that was also found to be so by the Prant Officer who decided the dispute and also by the leaned trial Judge who inspected the site. The plaintiff's ~~admission~~ admissions in this connection are also note worthy. He says "Karimsab goes to his house from the public road by passing across the open sites in front of Hanamawa, Vadappa and Husen. The open sites in front of the houese of Hanmawa and Vadappa are Government sites,(i.e. up to the point K). They use those sites as a public road. But sites in front of Husensab and Karimsab are their own plots (over which the plaintiff claims a prescriptive right). I admit that the public have a right to come to my house by passing across the open sites in fromt of Husensab and Karimsab." He has at one place stated " Carts come to my house through the suit site. There is a passage tnrough the suit site to go to my house." Ex. 94 Husensab admits that the site in front of his house is a part of the high way and the public have a right to go over it. According to the plaintiff that site is of the ownership of Husensab over which he has a prescriptive right of way. If that was the case, Husensab would not make the above admission against his own interest. Admittedly this open site forms part of the Gavthana over which the public have been enjoying a right of way from time immemorial and thus it would vest in Government under section 37 of the Bombay Land Revenue Code. Even supposing that the plaintiff's predecessors once laid claim to this site as their own, still the public having used that site as a public road it would vest in Government. It is clear from the sketch and other evidence that this site is a part of a lane which leads directly from the main public road AB to the collection of houses situate to the east of that road of which defendant No. 2's house is the last

and the public have been using it as a part of the way to these houses and further up to some distance to the east. In a similar case Uma v. Secretary of State (14 Bombay L.R. 934) our High Court has held that such a way would be a public road vesting in Government. In the head note it is stated " The land in question was a part of a Galli or lane which led directly from the main public road to the collection of houses situate round about the plaintiff's house. It was part of a way or lane open to the villagers and used by them freely upon all occasions: Held that the land, forming the road way through the village, site, was the property of the Government "

8. I, therefore, agree with the finding of the lower Court, and the result is that the appeal fails.

O R D E R.

The decree of the lower Court is confirmed and the appeal is dismissed with costs in one set.

15th October 1945. Sd/B.K.Dalavi.
District Judge.

Grounds of Appeal.

1. The judgment of the lower Court is contrary to law and evidence in the case.

2. The lower Court should have held that the Plff has proved his title to the suit plot.

3. The lower Court's inference from reading Ex. 39 is clearly wrong.

4. The Lower Court's reading of Ex. 39 is clearly wrong as it never contains " an admission that the Plff's predecessor had a right of way across the strip CD" The lower Court ought to have propertly read it as a way leading to Plff's house which obviously included the suit plot

and not across CD.

5. The lower Court ought to have seen that both the properties described separately in Ex. 39 could not be described separately, as them only, the property sold by Ex. 39 would be said to have been completely described.

6. The lower Court reproducing a passage from the judgment of the Revenue Tribunal with approval is clearly wrong, as the said judgment is also based on wrong reading of the documents and hence it has come to wrong inferences and conclusions.

7. Ex. 40 also which clearly proves the title of the suit property as being in the Plff has met the same fate regarding its reading and interpretation Ex. 39 in the hadns of the Court below.

8. The set of documents referred to in para 15 (c) of the judgment are quite consistent with proving the title of the Plff to the suit property, and the lower Court is wrong in reading from them to the contrary.

9. The lower Court is wrong in thinking that the Deft 2's house is in the same line of the houses as that of the Plff and those to the west of the Plff's house. And also the lower Court has wrongly read Ex. 49 the sale-deed in favour of the Defts in this regard.

10. The sketch given in para 9 of the judgment is incorrect to a degree as to lead the Court below to wrong inferences and conclusions. It is slightly but materially different from the one produced and relied on by the Defts themselves.

11. The lower Court has drawn inference from the statement of the Plff that the space in front of the houses of Hanamava and Waddappa Talvar is part of the public main road to the west. It is wrong to call

this statement as an admission by the ~~Plffs~~ Plff.

12. The lower Court has failed to draw proper inferences from the absence of any mention of a road or way in the sale certificate of the year 1876 and mortgage deed of 1891 and the lower Court's reading and understanding by the mention of the word 'road' towards the west in Exs. 48 and 49 are clearly wrong and misleading.

13. The lower Court has lead itself to wrong conclusions by the fact that there is no cart-road leading to the house of Deft No. 2. It is common experience every where that cart-roads cannot be available to each and every house every where. It is significant to note in this behalf that there is a public passage to the south of Deft No. 1's house.

14. The lower Court has lost sight of the ~~fact faces~~ fact that the house of Deft. No. 2 faces the south and not north.

15. The lower Court is wrong in framing issue No. 4 regarding the prescriptive right of way of Deft No. 2 after the case was half-heard contrary to the pleadings.

16. The lower Court should ~~have~~ have held that Deft No. 2 has stated untruths and half-truths and that the same has not been given due weight to by the lower Court.

17. The observation of the Revenue Tribunal as reproduced in para 24 of the judgment only shows that it has over-looked the sentiments and understanding of the writers and executants of the documents concerned who have their own ways of describing the properties for the purpose of conveyance with a mind to completely describe the property conveyed.

18. The lower Court should have held that section 37 of the Land Revenue Code does not apply to

39

the facts of the case.

19. In deciding issue No.1 the lower Court has wrongly thrown the burden on the Plff.

20. The lower Court ought to have recorded a finding on issue No. 5(newly added issue) in the negative against Deft No. 2.

21. The lower Court should not have held that the suit plot forms part of a public high way as there is no evidence or proof of dedication and also that it vested in Government.

22. The lower Court ought to have held by virtue of presumption regarding possession of open sites that possession was presumptively with the Plff who had title to the property and should have recorded a finding on issue No. 2 in favour of the Plff.

23. The lower Court's inference as a matter of pure probability that CD is in continuation of BK is contrary to facts and is therefore wrong.

24. Proper presumptions and inferences from the facts found are not drawn

25. The lower Court's order as to costs is wrong.

--*-*-*-*-*-*-*-*

Typed by

Read by

Compared by

" True Copy "

Clerk of the Court.

2 - JAN 1956